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Public Document

Ms. Gloria Blue
Executive Secretary, TPSC
Office of the USTR
600 17th Street, N.W.
Washington, D.C. 20508

FR0001@USTR.gov

Re: Thailand Section 201 Steel Brief

Dear Ms. Blue:

This Section 201 steel brief is filed on behalf of the Royal Thai Government (RTG) and Thai steel producers. The main products of concern are certain carbon flat products (i.e., plate, hot-rolled, cold-rolled, and coated) and carbon welded pipe.

Thailand is an early supporter and active participant in the U.S.-led efforts to address world non-economic overcapacity through the OECD Steel Committee.[1] As the world's fourth largest net steel importer and with import penetration over 50 percent, Thailand is clearly not part of the problem. Indeed, Thailand accounts for less than one percent of U.S. steel imports. Section I below provides an overview of Thailand's steel industry.

Thailand does not believe that any import restrictions should be recommended by the TPSC or imposed by the President. As outlined in the candid United States' December 17, 2001, filing with the OECD, the fundamental structural problems facing members of the United States steel industry have little to do with imports. Thirty years of shielding from international competition is the main reason why sectors of the domestic steel industry have failed to become internationally competitive. More restraints on the healthy influence of competition in an open market will do nothing to cure the ills of the non-economic domestic mills, but only prolong and promote their continued avoidance of the fundamental changes that are required.

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1 *Thailand to back US at OECD Paris meet*, American Metal Market (September 17, 2001).

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Thailand is especially concerned that if Section 201 import measures are imposed, America's steel imports will simply be shifted to other markets, including Thailand. This, in turn, will result in other countries putting in place their own steel-trade restrictions, a process that has already started, causing a downward spiral in world steel trade to the detriment of all nations. Meaningful international restructuring is unlikely under such conditions.

If import restraints are recommended to the President, two aspects of the TPSC recommendations are of particular importance to Thailand:

1. Appropriate application of the developing country exception required by[2] Article 9.1 of the WTO Agreement on Safeguards. Due to the 3% threshold, the exception would, by definition, apply only to those developing countries from which there were only negligible exports to the United States. See Section II below.

2. If the restraints have a quantitative aspect (whether quota or TRQ), they should apply on a global basis or at least contain a significant global residual volume for those countries not receiving country allocations. See Section III below.

In the Uruguay Round, Thailand and other developing countries agreed to the U.S. proposal for a WTO Agreement on Safeguards because it contained the Article 9.1 exception. Its application is taken very seriously and is indicative of the balance that must be achieved between the interests of developed and developing countries in the successful operation of the WTO. By definition, Article 9.1 excepts only negligible import volumes as developing countries with significant U.S. exports do not qualify for the exception. So any call for Article 9.1's non- or overly narrow application by domestic producers should be disregarded as gross overreaching. An application of Article 9.1 that effectively nullifies the exception would represent a fundamental disregard for the balancing of the United States' broader interests that must guide the President's decision. Rather, the proper, balanced application of the Article 9.1 exception is essential to broad international acceptance of any import restraints that may be imposed. This requires that:

- Application of the exception extends only to developing country (i.e.., GSP) WTO Members (as per Article 9.1; otherwise, what is the benefit of a developing country joining the WTO and incurring WTO obligations?) that do not have separate statutory exception tests (e.g., APTA and CBERA - otherwise these specific statutory tests for exclusion would be nugatory since they would be trumped by Article 9.1). Continued use of GSP designation for application of Article 9.1 is an obviously appropriate threshold requirement since it is an

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2 ITC Report at 519, n. 8, *Separate Views on Remedy of Commissioner Lynn M. Bragg* ("I note for the President's consideration respondents' argument that developing country WTO members should be excluded from any remedy action where the volume of these countries' imports is less than 9 percent of total imports. This finding appears to be mandated under the WTO Safeguards Agreement but is not specifically provided for in U.S. law.").

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objective, pre-existing U.S. trade policy determination of trading partners that are to receive preferential treatment as developing countries.

- The product grouping should be consistent between that used for the Commission's finding of an increase in injurious or threatening imports (i.e., the like product) and application of Article 9.1. Thus, applicability of the developing country exception should be determined on the basis of 1) all carbon flat-rolled products receiving an affirmative injury determination, and 2) carbon welded pipe other than OCTG. Each group constitutes a separate like product as determined by the ITC. This approach ensures an analytical consistency between the ITC's affirmative determinations and operation of Article 9.1.

- The telltale period should be 1998, because this is when steel imports surged by any measure. Every Commissioner points to import levels in 1998 as the key period for the affirmative injury determinations. The domestic industry and union focused on 1998 in making their case to the Commission, whether with respect to the actual impact of imports in 1998 or the "lingering effects" of the 1998 imports. The U.S. Government's report to the OECD emphasizes 1998. Clearly, this case had its origins in 1998. Thus, 1998 is the most appropriate year for determining whether the Article 9.1 exception should apply to a given like product. It is the most appropriate period for determining whether (and which) developing countries played a significant or negligible role in causing the injury found. In other words, if a developing country's U.S. exports did not surge above the Article 9.1 thresholds in 1998, it is hard to imagine a credible rationale for denying exception under Article 9.1.

If import restraints are imposed on imports from Thailand notwithstanding Article 9.1, and they are quantitative, they should apply on a global basis. Any country-specific allocation to Thailand would likely be commercially meaningless precisely because imports from Thailand have been negligible. Thus, country-specific allocations for small suppliers would have the perverse consequence of punishing those trading partners least responsible for the injurious increases in imports found by the Commission.

I. FACTS ON THAILAND'S STEEL INDUSTRY AND MARKETS

Thailand is a WTO Member and a developing country (e.g., U.S. GSP and USTR WTO SCM Art. 27.10 CVD de minimis and negligibility designations).

The World Steel Crisis has Disproportionately Impacted Thailand.

- Thailand, a country about the size of Spain with a population about the size of France, has a GDP smaller than the State of Louisiana's. Annual average per capita income is about $2,000. Yet, Thailand is the world's tenth largest steel importer and the fourth largest net steel importer in absolute tonnage.

- Imports account for over half of Thailand's domestic steel consumption (2000): carbon flat products - 57% import penetration; carbon pipe - 15% import penetration.

- Since 1998, several Thai steel mills have ceased operation (e.g., long products) or been in bankruptcy or reorganization (e.g., flat products).

- During the ITC POI (1996-2000), only 0.65% of total U.S. steel imports were from Thailand. Exports to the United States from Thailand accounted for about 7% of Thai steel production in 2000.

Thailand's Steel Production Does Not Contribute to World Non-Economic Overcapacity.

- Thailand consumes about 9 million tons of steel annually, but raw steel production capacity in Thailand is only about 3 million tons.

- Thailand's steel mills are modern and efficient - all carbon flat mills are greenfield facilities that commenced operations during the last 5 years to serve the domestic market.

- Given Thailand's high import penetration levels, the overwhelming focus of its steel producers is on the home market, as Thailand has become a regional hub for automotive and appliance manufacturing. Thailand's steel exports account for roughly one quarter of production.

- There is plenty of room for growth in Thailand's domestic steel consumption. Thailand's annual per capita steel consumption in 1999 was 95 kgs., compared to 406 kgs. for the United States, 356 kgs. for Western Europe, and 544 kgs. for Japan. Steel consumption in Thailand increased by about 50% from 1998 to 2000.

Thailand has acted responsibly in the wholly private, unsubsidized development of its steel industry. Thailand is an early and strong supporter of U.S. efforts in the OECD to reduce the world's non-economic, excess steel-making capacity. If major international markets are closed to fair steel trade (e.g., U.S. Section 201), millions of tons will be diverted to markets such as Thailand, triggering reactive measures and a harmful decline in world trade.

II. WTO SAFEGUARDS ARTICLE 9.1 DEVELOPING COUNTRY EXCEPTION

Article 9.1 was central to developing countries' endorsement of the WTO Agreement on Safeguards. Developed countries (i.e., the European Community) demanded selectivity in the application of safeguard measures (e.g., Article 5.2 potential supplier country quota allocations). Selectivity perforce connotes negotiation and discretion. Developing countries feared that, without the

Article 9.1 exception, they would always lack sufficient leverage to attain fair treatment in the application of safeguard measures.[3]

Article 9.1 provides:

> Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of the imports of the product concerned in the importing Member does not exceed 3 percent, provided that developing country Members with less than 3 percent import share collectively account for no more than 9 percent of total imports of the product concerned.

The exception is:

Mandatory ("shall"). See SAA at 958 acknowledging U.S. obligation to apply Article 9.1.

Applicable only to WTO Members (i.e., only countries that are both WTO Members and developing countries qualify). SAA at 958. Thus, non-WTO Members such as Russia, Ukraine, and Kazakhstan are not eligible and are not counted in calculating the collective 9% threshold.

Unaffected by parallelism considerations (i.e., WTO requires that developing countries' volumes included in injury determination must still be excluded from any remedy). U.S. -- Wheat Gluten, at para. 96, n. 96; U. S. -- Lamb Meat, at Annex 3-2, First Written Submission of the United States (May 15, 2000), paras. 236, 242, and 244.; Argentina -- Footwear, para. 5.122 (June 15, 1999).

Designed with built-in surge control mechanism ("as long as") (e.g., Poland's Article 9.1 exception from Wheat Gluten quotas removed by United States when imports from Poland surged). Notifications Pursuant to Article 12.1(C) and Article 9, Footnote 2, of the Agreement on Safeguards by the United States to the WTO Committee on Safeguards, para. B4 (Sept. 13, 2000).

Inapplicable to any individual developing country that exceeds 3% of total imports.

Per the Article 9.1 ratios, the numerator includes only WTO Members that are developing countries. Under U.S. law, it should also exclude those WTO Members that are developing countries and that receive separate, explicit statutory tests for possible remedy exceptions (i.e., CBERA and ATPA). Otherwise, Article 9.1 would trump the statutory test for these countries'

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3 See John H. Jackson, The World Trading System 175 (2d ed. 1999); Terrence P. Stewart, The GATT Uruguay Round: A Negotiating History (1986-1992), Vol. II at 1749-1750 (1993).

possible exclusion. The numerator (i.e., potentially eligible countries) should also be limited to GSP beneficiaries. This objective, pre-existing GSP-basis is easy to administer and, more importantly, ensures rational consistency in U.S. trade policy as to the extension of preferential treatment to designated developing countries.

The denominator includes all imports (i.e., "total imports of the product concerned"), whether or not otherwise excluded from the remedy. United States -- Line Pipe, para. 7.181, n.159 (e.g., NAFTA countries).

U.S. practice has:

- Normally applied the Article 9.1 exception, although it appears to have not been applied in Wire Rod. Presidential Proclamation No. 7273, 65 Fed. Reg. 8621 (Feb. 18, 2000); Notification Pursuant to Article 12.1(C) and Article 9, Footnote 2, of the Agreement on Safeguards on Taking a Decision to Apply a Safeguard Measure by the United States to the WTO Committee on Safeguards, at para. B3 (Mar. 28, 2000).

- Always based the Article 9.1 exception on import volume, not value.

- Utilized the U.S. GSP list to designate "developing countries" for purposes of Article 9.1 (but appears to have impermissibly included GSP countries that are non-WTO Members and countries subject to separate statutory exception tests such as CBERA and ATPA). This is perfectly appropriate because use of the GSP list ensures application of a well-developed and regularly updated objective determination of U.S. trade policy designations of developing countries for preferential treatment.

- Exercised reasoned discretion in the selection of the applicable peak injurious time period within the ITC's five-year POI. For example, Article 9.1 has been applied by the United States using:

  Broom Corn Brooms - average share of total imports in 1994 and 1995

  Wheat Gluten - import share in the two crop years ending June 30, 1994 and 1995 (a period of just over three years)

  Lamb Meat - unknown

  Line Pipe - 1998

  Wire Rod - not applicable

- Been ruled inconsistent with WTO obligations in applying Article 9.1 in Line Pipe (AB appeal pending) and is reportedly under challenge in Wire Rod.

In this Steel 201 Safeguards Case:

According to every ITC Commissioner, import levels in 1998 were the genesis of the domestic industry's injury for which import restraints have been recommended. Thus, 1998 is the most appropriate period to determine whether developing country imports were negligible and qualify for the Article 9.1 exception, or were a significant part of the problem.

The problem was centered in flat-rolled carbon products, which was also a single "like product" grouping relied upon by the Commission for its serious injury finding and as the condition precedent to the increase in imports finding. Thus, Article 9.1 also should be applied on the basis of the single, combined carbon flat-rolled like product. For the same reasons, Article 9.1 should be applied on the basis of the carbon welded pipe like product.

Thus, by these rational criteria, for flat-rolled carbon products, Thailand would qualify for the Article 9.1 exception because:

- Imports from Thailand constituted 0.42% of total imports (0.43% if tin mill products are excluded), and imports from developing countries under 3% of total imports were 8.59% of total imports.

And, carbon welded pipe products from Thailand also would qualify for the Article 9.1 exception under consistent application of these same criteria because:

- Imports from Thailand constituted 1.24% of total imports, and imports from developing countries under 3% of total imports were 7.03% of total imports.

Again, the appropriate data delineations for application of Article 9.1 are 1) numerator – GSP and WTO Members but not CBERA and ATPA countries (see Appendix A); 2) denominator-total imports; 3) product grouping by ITC like product determinations; and 4) 1998.

III. GLOBAL AVAILABILITY OF ANY QUANTITATIVE IMPORT RESTRAINTS

Article 2.2 of the Agreement on Safeguards requires that "{s}afeguard measures shall be applied to a product being imported irrespective of its source," thereby establishing a presumption in favor of global availability of any import restraints. If a quota is imposed, Article 5.2 permits, but does not require, allocation "among supplying countries" and country-specific allocations may be limited to those countries having a "substantial interest in supplying the product . . . ." Articles XIII.2(d) and XIII.5 of GATT 1994 extend these same considerations to TRQ's (albeit the referenced base period can vary between the two forms of quantitative restraints). In U.S. practice, quantitative restraints have sometimes been applied on a global basis (e.g., Wire Rod), but more often there have been country-specific allocations to only the major supplying countries with a global residual volume available to all other countries (e.g., Wheat Gluten and Lamb Meat). In this manner, the proscription of 19 U.S.C. § 2253(g)(3) can be met to "insure against inequitable sharing of imports by a relatively small number of the larger importers."

In this investigation, there are over 50 supplier countries. For each like product found by the ITC, there are sometimes dominant supplier countries (e.g., over 10 percent of imports). As in past practice, consistent with the statutory requirement to guard against "inequitable sharing" between a few major supplier countries, if there are to be any country-specific allocations, they should only be afforded to major supplier countries. All other countries should have equal access to the substantial residual quantity allowed. Otherwise, small supplying countries like Thailand, which have never exported injurious volumes of steel products to the United States would, by definition, receive extremely small and commercially meaningless country-specific allocations. In this instance, the remedy would not comport with the requirements of 19 U.S.C. §2253(g)(3).

There is no reason for the United States to depart from past practice in this investigation if quantitative restraints are imposed. Such restraints should apply on a global basis or, failing this, provide country-specific allocations for only the major supplying countries, leaving a significant residual volume for all other countries.

We appreciate this opportunity to provide Thailand's views to the TPSC. Please contact the undersigned should there be any questions concerning this submission.

Respectfully submitted,

Kenneth J. Pierce
Russell L. Smith

Counsel to the Royal Thai Government
and Thai Steel Producers

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APPENDIX A

Categorization of All Countries with Subject Steel Exports to the United States*

All WTO Members with steel exports to U.S.**

Albania
Antigua Barbuda
Argentina
Australia
Austria
Bahrain
Bangladesh
Belgium
Belize
Bolivia
Brazil
Bulgaria
Burma (Myanmar)
Cameroon
Canada
Cen African Rep
Chile
China
Colombia
Costa Rica
Cote d'Ivoire
Croatia
Cyprus
Czech Republic
Denmark
Dominica Is
Dominican Rep
Ecuador
Egypt
El Salvador
Estonia
Finland
France
Georgia
Gabon
Germany
Greece
Guatemala
Guinea
Guyana
Haiti
Honduras
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kenya
Korea
Kyrgystan
Kuwait
Latvia
Liechtenstein
Lithuania
Luxembourg
Macao
Malaysia
Mali
Malta & Gozo
Mauritius
Mexico
Moldova
Namibia
Netherlands
Netherlands Ant
New Zealand
Niger
Norway
Oman
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Romania
Sierra Leone
Senegal
Singapore
Slovakia
Slovenia
South Africa
Spain
Swaziland
Sri Lanka
St Lucia Is
Sweden
Switzerland
Thailand
Trin & Tobago
Tunisia
Turkey
United Arab Em
United Kingdom
Venezuela
Zimbabwe

*As per the list of aggregate steel imports subject to the ITC's 201 injury investigation listed at http://dataweb.usitc.gov/scripts/steel_reports.asp?CODE=B1.2&list_name=overall

**As of December 11, 2001

Categorization of All Countries with Subject Steel Exports to the United States*

All Non-WTO Members with steel exports to U.S.**

Algeria
Aruba
Bahamas
Belarus
Bosnia-Hercegov
Br Virgin Is
Cayman Is
Falkland Is
Iran
Kazakhstan
Kiribati
Macedonia
Monaco
Montserrat Is
Nepal
New Caledonia
Norfolk Is
Russia
San Marino
Sao Tome & Prin
Saudi Arabia
Syria
Taiwan
Tokelau Is
Ukraine
Vietnam
Yugoslavia

Andean Trade Preference Act (ATPA) Members

Bolivia
Colombia
Ecuador
Peru

24 Caribbean Basin Economic Recovery Act (CBERA) Members

Antigua and Barbuda
Belize
British Virgin Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Panama
Saint Lucia
Trinidad and Tobago
Aruba
Bahamas
Netherlands Antillles

**CBERA Members that had no steel exports to U.S.*

Grenada
Saint Vincent/Grenadines
St. Kitts and Nevis
Nicaragua
Barbados

*As per the list of aggregate steel imports subject to the ITC's 201 injury investigation listed at http://dataweb.usitc.gov/scripts/steel_reports.asp?CODE=B1.2&list_name=overall

**As of December 11, 2001

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GSP Categorization of
All Countries with 201 Investigation Subject Steel Exports to the United States*

WTO and GSP Members	WTO and GSP Members	Non-WTO GSP Members
Albania	Jordan	Br Virgin Is
Antigua Barbuda	Kenya	Falkland Is
Argentina	Kyrgystan	Kiribati
Bahrain	Latvia	Montserrat Is
Bangladesh	Lithuania	New Caledonia
Belize	Mali	Norfolk Is
Bolivia	Malta & Gozo	Tokelau Is
Brazil	Mauritius	Bosnia-Hercegov
Bulgaria	Moldova	Kazakhstan
Cameroon	Namibia	Macedonia
Cen African Rep	Niger	Nepal
Chile	Oman	Russia
Colombia	Pakistan	Sao Tome & Prin
Costa Rica	Panama	Ukraine
Cote d'Ivoire	Paraguay	
Croatia	Peru	
Czech Republic	Philippines	
Dominica Is	Poland	
Dominican Rep	Romania	
Ecuador	Sierra Leone	
Egypt	Senegal	
El Salvador	Slovakia	
Estonia	Slovenia	
Georgia	South Africa	
Gabon	Swaziland	
Guatemala	Sri Lanka	
Guinea	St Lucia Is	
Guyana	Thailand	
Haiti	Trin & Tobago	
Honduras	Tunisia	
Hungary	Turkey	
India	Venezuela	
Indonesia	Zimbabwe	
Jamaica		

*As per the list of aggregate steel imports subject to the ITC's 201 injury investigation listed at http://dataweb.usitc.gov/scripts/steel_reports.asp?CODE=B1.2&list_name=overall

**As of December 11, 2001

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